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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,832	11/19/2003	Roger J. Freeman	32325-CNT1	7073

7590 04/13/2005

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EXAMINER
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WILSON, JOHN J

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 04/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/716,832	FREEMAN, ROGER J.	
	<b>Examiner</b>	<b>Art Unit</b>	
	John J. Wilson	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/7/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8-13, 15-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huang (6012468) in view of Bond (3978872). Huang shows a plastic device, column 1, lines 50-53, having a center gripping section 1 and first and second picks 2 that can be flat, column 2, line 19. Huang teaches picking sections that have a thickness and width for inserting between teeth, however, does not give specific size ranges. Bond shows pick sections having a thickness in the range of .01-.02 inch, column 2, lines 65-69, and a width in the range of .1-.15 inch, column 2, lines 54-50 and column 3, lines 43-44. It would be obvious to one of ordinary skill in the art to modify Huang to include the range of dimensions as shown by Bond in order to better fit a pick between the teeth as suggested by Huang and Bond. The specific range of thickness and width are held to be obvious matters of choice in the size of a known structure to one of ordinary skill in the art. As to claim 2, Huang shows a rectangular shaped center section, however, does not state the size of this section, although, it is shown as being larger than the picking section and for the purpose of being held while picking. Bond shows a center section having a thickness of between .1 and .15 inches, column 2, lines 45-50. It would be obvious to one of ordinary skill in the art to modify Huang to include a center having a size as shown by Bond in order to better grip the tool in use. The specific range of size is an obvious matter of

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choice in the degree of a known parameter to the skilled artisan. As to claim 3, Huang teaches that one of the picks is thinner than the other, column 1, lines 31-34 and column 2, lines 22-24. The specific size range of the picking sections is an obvious matter of choice in the size of known elements to one of ordinary skill in the art. As to claims 4, 5, 11 and 12, Huang teaches converging sections as shown. The specific rate of convergences is an obvious matter of choice in the degree of a known parameter to the skilled artisan. As to claims 6, 13 and 18, Huang shows a roughened surface at 21. As to claims 9, 10, 16 and 17, Huang shows transition sections as shown in the drawings. The range of length of the sections is an obvious matter of choice in the size of a known structure to one of ordinary skill in the art. As to claim 20, Huang does not show using a constant thickness. Bond shows picks having a constant thickness. It would be obvious to one of ordinary skill in the art to modify Huang to include picks having a constant thickness as shown by Bond in order to make use of known shapes for cleaning between teeth and because the specific thickness of the picks is a non-critical feature.

Claims 7, 14 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huang (6012468) in view of Bond (3978872) as applied to claim 1 above, and further in view of Turjak (5769103). The above combination does not show using rounded corners. Turjak teaches rounded edges to minimize risk of injuries, column 2, lines 52-57. It would be obvious to one of ordinary skill in the art to modify the above combination to include rounded corners as shown by Turjak to reduce injuries.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,701,939. Although the conflicting claims are not identical, they are not patentably distinct from each other because to not include an elliptical center section, and the specific ranges of dimensions used are obvious matters of choice in not using limitations and in the size of known parameters.

### ***Drawings***

The drawings filed November 19, 2003 have been found to be acceptable by the examiner.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Brown (4660583) shows a center section 8 that includes elements 18, 20, 23 which have lengths that total to 23 mm, column 3, lines 30 and 31, and column 4, lines 52-54, and a

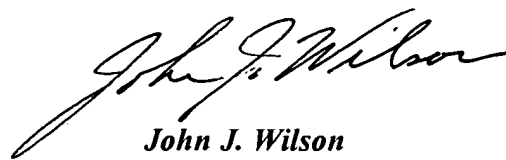
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pick length 6 of 12 mm, column 4, lines 49-54. Brown shows a pick width of .9 mm, and thickness of .1mm, column 4, lines 55-62, and a converging pick from 4.5 mm to 1 mm, column 4, lines 60-63. Rappoport (5027299) shows sizes and a rounded tip. Maloney et al (3779256) shows a roughened surface.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Wilson whose telephone number is 571-272-4722). The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached at 571-272-4720). The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**John J. Wilson**  
**Primary Examiner**  
**Art Unit 3732**

jjw  
April 8, 2005